IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7573 OF 2004

M/s.Gharda Chemicals Limited — Petitioner

vs.

1. It's Workmen represented by
Sarva Shramik Sangh,
Thane & anr. — Respondents

Mr.P.K.Rele, senior counsel with Mr.Piyush Shah for the petitioner.

Ms.Hutoxi Tavadia i/b.M/s.Hutoxi Tavadia for the respondent no.1.

CORAM : B.H. MARLAPALLE,J.

DATED : 25th August 2005

P.C.

Heard Mr.Rele, the learned senior counsel for the petitioner-company and Ms.Tavadia, the learned counsel for the respondent no.1. Respondent no.2 be deleted forthwith.

2. Being aggrieved by the Part I Award dated 19th April 2004 in Reference IT No.24/2003 made by the learned member of the Industrial Tribunal, Thane, the company has filed this petition. By the said interlocutory order the Industrial Tribunal has directed to maintain status quo in the employment of the workmen and while passing the said interlocutory award some observations

have been made by the learned member particularly in paragraphs 14 and 15 which do not appear to be in keeping with the settled position in law in respect of the employees engaged by the contractor in a statutory canteen i.e. the canteen run under the Factories Act, 1948. As per the learned member of the Industrial Tribunal, it is not necessary to make contractor as a party to the reference. The order of reference dated 27th March 2003 is only between the present petitioner and the respondent-union and is in respect of the benefits of permanency to be granted to the 16 workmen listed in the schedule to the reference. In fact, the order of reference prima facie does not take into consideration that these 16 employees were engaged through the contractor. However, in the statement of claim filed by the respondent-union before the Industrial Tribunal it has been admitted that these 16 employees have been engaged through the contractor i.e. M/s.Krishna Caterers, but it has been alleged that the contract is sham and bogus. It is further alleged that the registration/licence granted under the Contract Labour (Regulation & Abolition) Act, 1971 has not been renewed beyond December 2002. In the written statement filed by the company before the Industrial Tribunal, the petitioner has specifically stated that this statutory canteen is run by the contractor and employees named in the schedule to the reference order are the employees of

the contractor in fact and in law.

3. In view of the law laid down by the Constitution Bench in the case of Steel Authority of India Limited & ors v. The National Union Waterfront Workers.& ors, AIR 2001 S.C. 3527, the issue of employer employee relationship is required to be adjudicated in the pending reference. It is necessary for the union to prove that the petitioner company is in fact the employer and the contract is a sham and/or bogus and the contractor engaged by the company is only a name lender. For adjudication of this issue of employer and employee relationship between the petitioner and the employees, it is imperative that M/s.Krishna Caterers is before the Tribunal. The observations of the Tribunal as referred to hereinabove cannot be sustained. The learned counsel for the respondent-union rightly conceded that she would apply to the Industrial Tribunal for impleading M/s.Krishna Caterers as a necessary party. In fact such an application would be in keeping with the law laid down in the case of Indian Petrochemicals Corporation Ltd. & anr. vs. Shramik Sena, 1999 AIR SCW 2740 and Haldia Refinery Canteen Employees Union & ors. v. Indian Oil Corporation Ltd. & ors, 2005 AIR SCW 2653.

4. The Industrial Tribunal has noted in the impugned award that pending adjudication on the dispute regarding

permanency, the employment of the employees concerned at present was required to be protected and, therefore, granted status-quo which means that if they are the employees of the contractor, they shall continue to be so and, obviously, their service conditions would be governed as per the terms between them and the said contractor. At the same time a contractor would not be precluded from taking any disciplinary action if so required against any of these 16 employees. The impugned award also does not and cannot make out a prima facie case of employer employee relationship between the petitioner and the 16 employees. This is an issue which has to be gone into during the course of adjudication of the reference. Just because 16 employees are employed in a statutory canteen, the law laid down by the Apex Court in the case of Indian Petrochemicals Corporation Ltd. (supra) and Haldia Refinery Canteen Employees Union & ors. (supra) clearly lays down that they cannot claim permanency in the employment of the petitioner per se. It is imperative that the issue of employer employee relationship is therefore adjudicated upon by allowing all the three parties i.e. the petitioner as the principal employer, the canteen contractor and the union. The findings of the Tribunal that it was for the company to challenge the reference before this court are indefensible. In the event the petitioner company is required to discontinue the contract of M/s.Krishna

Caterers for any unforeseen reasons either at the instance of the union or on account of any other compelling reasons, it cannot be precluded from applying for leave to the Tribunal for changing the contractor during the pendency of the reference.

5. The petition is, therefore, disposed off in terms of the following order:

(a) The respondent-union shall apply to the Tribunal for impleading M/s.Krishna Caterers as the additional first party within a period of two weeks from today and this application shall be decided by the Industrial Tribunal in keeping with the law laid down in the case of Indian Petrochemicals Corporation Ltd. and anr. and Haldia Refinery Canteen Employees Union & ors. (supra), within a period of four weeks from its presentation. The learned counsel for the company states that such an application will not be opposed by the Company.

(b) The order of status-quo passed in the impugned Award will not come in the way

of the contractor for taking any disciplinary action against any of the 16 employees during the pendency of the reference.

(c) The employer employee relationship issue shall be adjudicated along with all other issues between the petitioner and the 16 employees on the basis of the evidence that may be adduced by the parties and the impugned Award would not in any way preclude the petitioner from agitating and proving that the 16 employees are not its employees.

(d) The payment of salary, wages and extending all other service benefits shall be the responsibility of the canteen contractor during the pendency of the reference and the petitioner shall be responsible to these 16 employees only if the contractor fails to do so. The issue of employer employee relationship shall be determined in the final Award without being influenced by any observations made in the impugned Award.

(e) The adjudication of the reference is hereby expedited and the reference to be heard and decided preferably by 31st May 2006.

(B.H. MARLAPALLE,J.)